IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 10498 of 1996

Between:

Y.Nagaraja Sarma, S/olate SriY.Satyanarayana,

Aged 34 years, Clerk, Syndicate Bank,

Orvakal Branch,
R/o.Orvakal, Kurnool District.

..... PETITIONER

AND

Syndicate Bank, represented by its

Deputy General Manager,
Zonal Office, Hyderabad .

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction particularly one in the nature of writ of certiorari after calling for the records relating to Administrative Order passed in Ref.No.487:133(M):IRS, Dt.17/04/96 by the respondent herein and quash the same as being illegal, arbitrary and without jurisdiction.

Counsel for the Petitioner: MR.M.PANDURANGA RAO

Counsel for the Respondent: MR.K.SRINIVASAMURTHY, Standing Counsel for Syndicate Bank.

The Court made the following :

ORDER:

The Administrative Order dated 17-04-1996 whereby Rs.12,000/- + interest thereon alleged to be the financial loss incurred by the Respondent-Bank on account of the alleged misconduct of the petitioner, established in an earlier enquiry against him is directed to be recovered from his salary and allowances or from any other monies payable by the Bank to him, is assailed in this writ petition.

The petitioner had joined the Respondent-Bank as Clerk in the year 1979 and was working in the current account department of its Kurnool Branch in February, 1981. His duties *inter alia* consisted of posting in the ledger of any cheques presented to the Bank and which came to his desk in the course of processing in the Branch. On 05-05-1981, he posted a cheque in an amount of Rs.12,000/- which was made over to him for being entered in the ledger. This entry was made after scrutiny of the instrument by the competent Officer of the Bank. In respect of this transaction, on
13-06-1981, he was placed under suspension alleging that it was in respect of the theft of a cheque book bearing Nos.964001-964100, utilization of cheque No.964015 and the fraudulent encashment of the cheque on 05-05-1981 for Rs.12,000/- and causing of the disappearance of the evidence in respect of the said cheque. The petitioner submitted his explanation on 15-06-1982 denying the allegations of any wrong doing in respect of the transaction and submitting in detail how he was not involved in any fraudulent conduct except posting of the cheque in the ledger which was his limited duty. He was reinstated to duty on revocation of his suspension on 10-12-1982. However, his request for payment of arrears of salary from the date of suspension to reinstatement was not responded to on the ground that disciplinary action is pending.

An Enquiry Officer was appointed on 18-10-1986 and the process of enquiry ensued. On 18-08-1987, a proceeding was issued to the petitioner proposing

stoppage of one increment with cumulative effect. By subsequent proceeding dated 07-10-1987, the proposal of stoppage of one increment with cumulative effect was mitigated to a mere warning. This was on the ground that the charge of any mala animus of the petitioner in respect of the fraudulent encashment of the cheque of Rs.12,000/- was not made out in the enquiry and there was no evidence to show that he was any way responsible for encashment of the amount except having posted the cheque in the ledger in the normal course of his duty. Therefore, the disciplinary enquiry against the petitioner in respect of the transaction on 05-05-1981 culminated in the imposition of the penalty of warning.

However, by the proceedings impugned, dated 17-04-1986, nearly 8 ½ years after the imposition of penalty by the order dated 07-10-1987, the Respondent-Bank proposed to recover Rs.12,000/- + interest thereon on the allegation that financial loss was incurred by the Bank on account of the misconduct of the petitioner. The petitioner challenges this order on the ground that in the disciplinary proceedings, the Bank having concluded the proceedings by administering a warning, no power is available to administer a further penalty by way of recovery of the amounts, particularly as the very minor penalty of warning was administered on a finding that the petitioner was not responsible for the fraudulent encashment of the cheque.

In the counter affidavit filed by the respondent-Bank, it is clearly admitted that the petitioner was held guilty because he had made an entry for Rs.12,000/- and altered the grand total without the knowledge of the Supervisor and without obtaining the Supervisor's initials. Responding to the petitioner's challenge as to the competence of the respondent to order the impugned recovery after he was administered a penalty of warning in the disciplinary proceedings, the respondent contends that the Bank has the right to recover the loss caused by the fraud, from the negligent employee and that such recovery would send the right signal to negligent staff members to be more careful and vigilant in future. In accordance with the policy guidelines followed by the respondent, the recovery order has been issued, concludes the Bank.

Pious intentions do not *per se* provide a legal foundation for executive conduct. Having initiated a due process of disciplinary proceedings culminating in an order of warning, the disciplinary action against the petitioner in respect of the allegations relating to the transaction on 05-05-1981 has come to a close. No rule or other instrument is cited by the respondent-Bank in support of its action in trying to

impose penalty on the petitioner in instalments. Having decided consciously that the misconduct of the petitioner warrants only a very minor penalty of warning, the respondent will have to rest content with that conclusion, however misguided, it may have been, unless the order of penalty could be revised or reviewed by any legitimate proceeding available to the Bank. Recovery of the financial loss caused is one of the specified penalties in many disciplinary jurisdictions. It is neither pleaded, urged nor demonstrated before this Court by either of the parties that recovery of financial loss caused to the respondent-Bank is one of the specified penalties under the disciplinary rules applicable to the parties herein. Be that as it may, even if it were one of the specified penalties, such penalty could have been imposed only along with the penalty of warning if the Management had so desired on the conclusion of the disciplinary proceedings. Once the disciplinary proceedings have culminated in the imposition of a punishment and which has become final, the Bank is left with no power, authority or jurisdiction to pursue the disciplinary proceedings merely on account of being the employer and therefore in a position to pay periodic salaries to the petitioner employee. No special jurisdiction vests in the Bank, absent any instrument produced vesting such jurisdiction, to effect recoveries from the salaries of an employee. The amount of Rs.12,000/- is not claimed to be representing any advances, house building or the like obtained by the petitioner. In the totality of the facts and circumstances of the case, the impugned order is unsustainable and is accordingly set aside.

In the result, the writ petition is allowed. There shall, however, be no order as to costs.

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GODA RAGHURAM, J

Dated: 08-10-2004.

Chvn.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Friday, the eighth day of October, Two thousand and four.

ASSISTANT REGISTRAR.

// TRUE COPY //

SECTION OFFICER

To

1. The Deputy General Manager,
Syndicate Bank,

Zonal Office, Hyderabad .

2. Two C.D. copies.